

Comments Template on EIOPA-CP-14-046 Consultation Paper on the proposal for Guidelines on the extension of the recovery period in exceptional adverse situations		Deadline 02.Mar.2015 23:59 CET
Company name:	Insurance Europe	
Disclosure of comments:	EIOPA will make all comments available on its website, except where respondents specifically request that their comments remain confidential. Please indicate if your comments on this CP should be treated as confidential, by deleting the word Public in the column to the right and by inserting the word Confidential.	Public
<p>Please follow the instructions for filling in the template:</p> <ul style="list-style-type: none"> ⇒ <u>Do not change the numbering</u> in column "Reference". ⇒ Please fill in your comment in the relevant row. If you have <u>no comment</u> on a paragraph, keep the row <u>empty</u>. ⇒ Our IT tool does not allow processing of comments which do not refer to the specific paragraph numbers below. <ul style="list-style-type: none"> ○ If your comment refers to multiple paragraphs, please insert your comment at the first relevant paragraph and mention in your comment to which other paragraphs this also applies. ○ If your comment refers to sub-bullets/sub-paragraphs, please indicate this in the comment itself. <p>Please send the completed template to Consultation_Set2@eiopa.europa.eu, in MSWord Format, (our IT tool does not allow processing of any other formats).</p> <p>The paragraph numbers below correspond to Consultation Paper No. EIOPA-CP-14-046.</p>		
Reference	Comment	

**Comments Template on EIOPA-CP-14-046
 Consultation Paper on the proposal for Guidelines on the extension of the recovery
 period in exceptional adverse situations**

**Deadline
 02.Mar.2015
 23:59 CET**

General Comment	<p>Insurance Europe welcomes the opportunity to comment on the guidelines on the extension of the recovery period in exceptional adverse situations. Insurance Europe have the following general concerns:</p> <p>Many guidelines state the obvious or repeat the Directive Several guidelines should be deleted (guidelines 3, 4, 5, 6, 7 and 8) as they either state the obvious, directly repeat the requirements or go beyond the Solvency II Directive or the Delegated Acts.</p> <p>A restrictive supervisory approach in deciding on a timeframe for an extension could lead to unintended outcomes (guideline 2) In setting the extension timeframe supervisors need to consider the undertakings business context to avoid unintended outcomes, like pro-cyclical effects, when managing the business and the risks in order to re-establish an appropriate level of eligible own funds to cover the SCR. A restrictive approach in setting the extension timeframe could force undertakings into taking rushed decisions that could be unnecessarily costly due to the adverse situation or the lack of time to recover. It should be recognised that undertakings have a vested interest in staying in going concern and that pro-cyclical effects are kept at a minimum. Hence, Insurance Europe requests a reasonable approach by supervisors and EIOPA.</p>	
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1.5.	<p>Insurance Europe is aware that an exhaustive list of what constitutes “high impact catastrophic event” as set out in Article 138(4)(c) is not possible, but it would however be welcome if some examples could be added in the introduction or in the explanatory text of these guidelines.</p>	
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1.14.	<p>Guideline 1</p> <p>This guideline should be deleted as it duplicates articles 288 and 289 of the Delegated Acts. In particular, article 288(c) already asks to consider pro-cyclical effects. Protection of policyholders is already mentioned in article 289(a).</p>	
1.15.	<p>Guideline 2</p> <p>This guideline should be rephrased. According to Article 138 (4) of the Directive, an extension of the recovery period could only be granted in exceptional adverse situations that exist where “a significant share of the market or the affected lines of business are seriously or adversely affected”. Hence, a “restrictive” approach in deciding on the duration of an extension could trigger unintended adverse economic outcomes, such as pro-cyclical effects if assets are sold at an inopportune time or funding is needed at higher rates to show progress which is the opposite of what should be achieved. This approach would also be consistent with guideline 1.</p> <p>Redrafting proposal:</p> <p><i>The supervisory authority should aim to be realistic when deciding on the duration of the extension, taking into consideration the specificities of undertakings, the markets they operate in, and the level of exceptional adverse situation.</i></p> <p>The guideline also contradicts the requirements set out in guideline 9 by referring to a further extension on a later date, whereas guideline 9 requires materially worse conditions in order for the extension to be granted.</p>	

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1.16.	<p>Guideline 3</p> <p>This guideline should be deleted as it goes without saying that the undertaking should apply for an extension before the previous extension has expired. Furthermore, it also duplicates article 138(4) of the Directive, stating that “the supervisory authority may extend, for affected undertakings, the period set out in the second subparagraph of paragraph 3”.</p>	
1.17.	<p>Guideline 4</p> <p>This guideline should be deleted from this paper as it is covered by CP-14-062 on recovery plans and finance schemes.</p> <p>Subsequently, the following comments apply:</p> <ul style="list-style-type: none"> • Paragraphs (b), (c) and (d) of this guideline largely duplicate CP 14/062 “Content of the recovery plan and finance scheme”. More specifically, paragraphs (1)(a) and (1)(d) of CP 14/062 are very similar to paragraphs (b), (c) and (d) of guideline 4. We recommend not duplicating requirements on the recovery plan in this guideline and instead referring to the requirements in the RTS on the recovery plan and financing scheme (CP-14-062). • Please update the references to the Delegated Acts so the guideline refers to Articles 288 and 289 instead of Articles 279 and 280. • The process in terms of information requested has to be clearly delineated and linked to the exceptional adverse situation and the determination to extend the recovery period so that the supervisor is not in a position to have unlimited leeway in its requests. • In (a) please add “by the undertaking” in the following sentence: “<i>a justification by the undertaking of the extension.....</i>” to ease the readability. • In (c) reference is made to the objectives to be achieved every three months. We assume that these “three months” are derived from Article 138(4), last paragraph where the undertaking concerned shall submit a progress report every three months setting out the measures taken and the progress made. If this assumption is correct, please add a reference to the progress report in paragraph (c), to make the link to the three months’ time intervals more evident. For an undertaking in recovery, focus should be on acting decisively and to be supported by their numbers, keeping in mind that these should not be too detailed as they can only be 	

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	estimates.	
1.18.	Guideline 5 This guideline should be deleted as it is already covered by Article 138(4)(a) in the Directive and Article 288(c) of the Delegated Acts.	
1.19.	Guideline 6 This guideline should be deleted as it is already covered by Article 138(4)(b) in the Directive and Article 289(i) of the Delegated Acts.	
1.20.	Guideline 7 This guideline should be deleted as it is already covered by Article 138(4)(c) in the Directive and article 289(b) of the Delegated Acts.	
1.21.	Guideline 8 This guideline should be deleted as it goes beyond the Directive and the Delegated Acts. No such provision has been mentioned in neither of the legal texts. It is unsound to revoke or reduce the recovery period only because one of the situations mentioned in the second subparagraph of Article 138(4) of the Directive have improved materially. <ul style="list-style-type: none"> • For Article 138(4)(a) a recovery in financial markets is not a sufficient reason to reduce or revoke an extended recovery period. Indeed, as part of its recovery plan, the undertaking may have rebalanced its asset portfolio following the fall in financial markets. Therefore, the undertaking may not benefit significantly from such a recovery in financial markets. Reducing or revoking the extended recovery period would not be appropriate in such cases. Such an unnecessary reduction in recovery periods may also induce pro-cyclical effects. • For Article 138(4)(b) an increase in interest rates is not a sufficient reason to reduce or revoke an extended recovery period. As part of a recovery plan, certain undertakings may have, for 	

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	<p>instance, extensively use interest rate swaps in order to reduce their interest rate risk and SCR. A subsequent increase of interest rates will not benefit such undertakings. Therefore, reducing or revoking the extended recovery period is not appropriate in such cases. Such an unnecessary reduction in recovery periods may also induce pro-cyclical effects.</p> <ul style="list-style-type: none"> For Article 138(4)(c) it is difficult to see how an improvement of a high-impact catastrophic event may materialize.. As an example, a severe earthquake may reduce the solvency position of certain undertakings and it is not evident how the situation could improve materially, as stated under guideline 8. 	
1.22.		
1.23.	<p>Guideline 9</p> <p>Please delete “material” as under adverse situations, even though the undertakings assumptions might be correct the actions taken might not have the initially expected impact, and hence might not constitute a material change. The important aspect should be that the undertaking shows they follow their recovery plan and take the necessary steps to recover, even if progress is not achieved.</p>	
1.24.		
1.25.	<p>Guideline 11</p> <p>The guideline needs some context as it is not clear when it applies and what the consequences are for the undertaking if the national supervisors consider them not to have made significant progress. In particular, (b) refers to the “<i>quantitative three months’ targets that were included in the recovery plan</i>” which we assume is referring back to guideline 4(c). Accordingly, the same comment as provided for paragraph 1.17 applies, that clearer reference should be made to the progress report that needs to be submitted every three months. Additionally, the NSA should not overly rely on the quantitative targets, since as we said above this can only be estimates.</p>	
1.26.	<p>Guideline 12</p> <p>Please redraft the guideline to make it clear that the decision to withdraw the extension should be justified in writing: “...it should be justified in writing and the undertaking should be given the opportunity”</p>	

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1.27.		
1.28.	Guideline 14 Please consider moving this guideline to the guidelines on exchange of information within colleges (CP-14/050).	
1.29.	Guideline 15 Please consider moving this guideline to the guidelines on exchange of information within colleges (CP-14/050) as it concerns discussions within the college of supervisors regarding extension of the recovery period for either an entity or the group itself.	
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2.2.	The sentence " <i>but the primary objective in granting an extension is the reduction or avoidance of pro-cyclical effects</i> " should be added to the guideline itself, as it is one of the key objectives for granting an extension.	
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2.11.	This paragraph states <i>"The closer to the minimum capital requirement the level of own funds has fallen, the more urgent the need for the undertaking to improve its solvency position and the shorter the possible extension of the recovery period"</i> . We do not agree with this reasoning. Undertakings which are closer to the MCR should be given at least the same recovery period compared to undertakings which have a higher surplus above their MCR. Even when the recovery period would be the same for undertakings which are close or far from the MCR, the undertakings which are closer to the MCR will have to take significantly stronger recovery actions compared to undertakings which have a larger buffer above the MCR. It is unlikely that undertakings which are close to the MCR are able to recover faster than undertakings with a higher surplus above their MCR.	
2.12.		
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2.14.	Please refer to financial risk mitigation techniques to be aligned with terminology used in the DAs.	
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2.26.	The spirit of paragraph 15 of CP-14-062 under the "analysis" section, where reference is made to <i>"...the information is as reliable and complete as can be expected of information that is collated outside the normal reporting cycle"</i> should be included the explanatory text of these guidelines.	

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2.27.	The guidelines refer to both projected SCR, prospective SCR, expected SCR and targeted SCR, but the difference between these terms and what they are actually trying to reflect are not evident. Please align the terms and only use different terms where needed. It would also be welcome if the terms could be further explained in the explanatory text to ensure a consistent understanding of them and how they are used. Furthermore, in CP-14/062 call for advice, reference is only made to the prospective SCR/MCR which is the target SCR/MCR for the re-establishment of compliance with these capital requirements (page 6).	
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2.35.	This paragraph is unsound as undertakings may have implemented different recovery measures and therefore are exposed in a different way to the "material improvement of the situation". E.g. a fall in equity markets (i.e. unforeseen, sharp, and steep fall in financial markets) may trigger certain undertakings to sell equity portfolios or to apply different hedging techniques. A subsequent recovery of equity markets therefore does not necessarily improve all undertaking's solvency position. Even though the situation is not undertaking-specific, undertakings in the same situation can apply different methods to recover. Hence, this paragraph should be deleted. See also our comment to guideline 8 (paragraph1.21)	
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2.45.	The NSA should not overly rely on the quantitative targets, since as we said for guideline 11 this can only be estimates.	
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2.50.	The reference to a "national legal framework of the group" is unclear. We assume that the reference is supposed to be to the national legal framework where the group is headquartered.	
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2.52.	Please align terms with the Directive and use "individual" instead of "solo" to be consistent.	
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2.56.	The "authorities concerned" is usually a term used under group internal model and refers to the supervisory authorities who needs to cooperate in order decide whether or not to grant permission for using a group internal model. Hence, by referring the authority concerned in this paragraph it can cause confusion. It should be considered whether "relevant supervisory authority" would be a more appropriate reference.	
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